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No. 356

In the Supreme Court of the United States

OCTOBER TERM, 1929

ROBERT H. LUCAS, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

THE PILLIOD LUMBER COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION TO ADVANCE

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The Solicitor General, on behalf of the Commissioner of Internal Revenue, opposes respondent's motion to advance this case to be heard immediately after the argument in No. 118, *Florsheim Brothers Drygoods Co., Ltd.* v. *United States*, and No. 414, *White* v. *Hood Rubber Co.*

The question of the sufficiency of a tentative return to set the statute of limitations in motion, which is one of the questions involved in cases Nos. 118 and 414, is not presented in the instant case. The record in the instant case shows that two ques-

tions were raised before the Board of Tax Appeals, (1) whether the filing of a tentative return started the running of the statute of limitations, and (2) whether the subsequent filing of an unverified completed return was sufficient for the purpose. The Board held against respondent on both questions. (R. 6–10.) In its petition for review in the Circuit Court of Appeals (R. 11) respondent specifically raised the question as to the sufficiency of the unverified completed return to start the running of the statute of limitations and in addition made two general assignments of error, one to the effect that the Board erred in holding that the statute of limitations had not run, and the other to the effect that the Board had erred in rendering its decision and entering judgment in favor of the Commissioner.

The taxpayer's brief in the Circuit Court of Appeals shows that the only question raised was that of the sufficiency of the unverified completed return to set the statute of limitations in motion, and that point alone was considered by the court. (R. 12–15.)

It is respectfully submitted that respondent's motion to advance in the instant case should be denied.

CHARLES E. HUGHES, JR.,
Solicitor General.

JANUARY, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930